IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Gurubux Singh Vs. Laxmi Narain and another.
(S.B. CIVIL WRIT PETITION NO.105/2005)

DATE OF ORDER ::: APRIL 1, 2005

P R E S E N T

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. Arun Bhansali, for the petitioner.

Mr. D.R. Bhandari, for the respondent no.1.

BY THE COURT :

REPORTABLE

Heard learned counsel for the parties.

The petitioner/defendant sought permission to cross examine the witnesses of the plaintiff by submitting application before the Rent Tribunal, Udaipur (for short 'the Tribunal'). The trial court vide order dated 3.12.2004 allowed cross examination of the plaintiff and his son only and rejected the prayer to permit cross examination of the other witnesses of the plaintiff.

According to learned counsel for the petitioner, the petitioner should have been granted opportunity to cross examine other witnesses of the plaintiff also. It is submitted that in view of the decision rendered by the Division Bench of this Court in the case of Aasandas vs.

State of Rajasthan and others (D.B.Civil Writ Petition No.4374/2004) on 13.12.2004, the writ petition deserves to be allowed and the order dated 3.12.2004 deserves to be set aside.

Learned counsel for the respondent/plaintiff submits that the order was passed under the special Act i.e. Rajasthan Rent Control Act, 2001 (for short 'the Act of 2001') and the provisions of C.P.C. have not been made applicable in the proceedings before the Tribunal and the Tribunal has jurisdiction to decide its own procedure. The Tribunal exercised its discretion and thereafter permitted the petitioner to cross examine plaintiff and his son and since the Tribunal passed the order in its discretionary power, therefore, even if there is a mistake of fact or mistake of law that cannot be corrected by this Court by exercising jurisdiction under Article 227 of the Constitution of India and furthermore, the petitioner can challenge the impugned order in appeal in case any reason remains for the petitioner to challenge the impugned order after the decision of the suit.

I have considered the rival submissions.

This Court feels that when the illegalities are grave, extraordinary steps can be taken by the High Court by exercising equitable jurisdiction under Articles 226/227 of the Constitution of India. It appears from the impugned order dated 3.12.2004 itself that the order is non-speaking

order and if the order remains as it is, it also conveys which may even go against the plaintiff himself because the Tribunal observed that the plaintiff and his son has knowledge about the facts, therefore, the permission is granted for cross examination of these two deponents. Whether the Tribunal, without there being any objection of the defendant, decided that these two are the competent witnesses in favour of the plaintiff ? Meaning thereby, by implication, whether the trial court has discarded all other witnesses of the plaintiff ? How the Tribunal judged the credibility of the witnesses ? Whether it can be presumed that these two witnesses stated on oath which cannot be accepted without their cross examination and the remaining witnesses' statements will be accepted as true ? Or if only plaintiff and his son know the facts, whether the tribunal will not consider the evidence (affidavits) of the plaintiff's other witnesses while deciding the suit for eviction against the petitioner ?

It is true that the order under challenge is discretionary order but that does not mean that the power has been given to Court of law to pass non-speaking order. Even the discretionary orders can be passed only judiciously and not arbitrary. It is also true that the impugned order could have been challenged by filing appeal but only after the decision of the main proceedings before the Tribunal. Bar of alternate remedy is not absolute bar but is a restriction imposed by the Court upon itself. When the facts are glaring and brought to the notice of the

Court for correction under the supervisory jurisdiction of this Court, then simply because the order can be challenged after the decision of the suit itself, there cannot be absolute bar for exercise of supervisory powers under Article 227. By doing so, this Court will be refusing to exercising supervisory jurisdiction when it is needed. Otherwise also, if such type of order has come before the Court which cannot be justified even by supporting arguments of the opposite party, then there appears to be no reason for multiplying proceedings by rejecting the writ petition and directing the petitioner to raise the ground in appeal so as to further multiply proceedings by having an order of remand from the appellate court and retrial of the entire suit. It is true that this Court should exercise supervisory power under Article 227 in civil litigations with care and caution and this Court is directing the parties to challenge the order passed in civil proceedings in appeal but that it is not a restriction imposed upon itself to be applied in all cases.

Apart from above, in view of the division bench judgment of this Court in the case of Aasandas (supra), this Court's position in the mater of granting permission to cross examination of the deponent in Rent Act itself has been cleared and the permission to cross examine of the witnesses of the opposite party is required to be given to the petitioner. There was no reason for the tribunal to choose and pick up the witnesses for cross examination.

It will be worthwhile to mention here that even it cannot be the case of the plaintiff that his two witnesses were only the competent witnesses and had knowledge of the facts of the case. If it is so, then what for the plaintiff submitted the other evidence.

In view of the above discussion, this writ petition is allowed, the order dated 3.12.2004 is quashed and set aside and the Rent Tribunal is directed to grant opportunity to the petitioner to cross examine all the witnesses of the plaintiff.

Learned counsel for the respondent then submitted that the division bench in the case of Aasan Das (supra) directed the Tribunal to fix two dates for cross examination of deponents of each party after directing that it will be the responsibility of each party to keep their witnesses ready for cross examination on such dates fixed by the Tribunal and no adjournment shall be granted except it becomes necessary for the reasons to be recorded by the Tribunal.

It is true that such directions were given by the Division Bench in the above case. This Court feels that those directions were given by the Division Bench in the facts of that case and that is not a declaration of law by the Division Bench. This Court feels that in this case, there is no need of issuing such directions as the Tribunal can take steps by following the spirit of the directions

given by Division Bench but at the same time, liberty is required to be given to the Tribunal or the courts below to frame their own timetable and decide the cases expeditiously and, therefore, I do not feel it necessary to issue further directions so far as the trial of the case is concerned except that the Tribunal or Courts are required to decide the suit expeditiously by taking steps in time and by giving full opportunity to all the parties to present their case.

(PRAKASH TATIA), J.

S.Phophaliya